

No. 82-1390

In the Supreme Court of the United States

OCTOBER TERM, 1982

RONALD N. ASHLEY, ET AL., PETITIONERS

v.

CITY OF JACKSON, MISSISSIPPI, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT*

**BRIEF FOR THE CITY OF JACKSON,
MISSISSIPPI IN OPPOSITION**

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QUESTIONS PRESENTED

Whether the court of appeals correctly held that petitioners' challenge to the operation of an existing consent decree should be filed with the district court that has continuing jurisdiction over the enforcement of the decree and not in a separate law suit.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1A-6A) is reported at 687 F.2d 66. The opinion of the district court (Pet. App. 12A-13A) is not officially reported.

JURISDICTION

The judgment of the court of appeals was entered on September 27, 1982. An order denying rehearing (Pet. App. 7A-8A) was entered on November 19, 1982. The petition for a writ of certiorari was filed on February 16, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

On January 11, 1973, a suit was filed by private plaintiffs alleging that the Police Department for the City of Jackson, Mississippi, had engaged in racial discrimination against black applicants and employees. *Corley vs. Jackson Police Department*, Civil Action No. 73J-4(C) (S.D. Miss.).

Thereafter, a similar suit was filed against the City of Jackson, Mississippi, by the United States Department of Justice, *United States vs. City of Jackson*, Civil Action No. J-74-66(N) (S.D. Miss.).

On March 25, 1974, consent decrees, as agreed to by the parties and as approved by the Court, were entered establishing criteria for hiring and promotional practices by the City of Jackson, Mississippi. The district court in approving the decrees expressly retained jurisdiction over the cases for such further relief or other orders as might be appropriate.

While the City continued to operate under the consent decrees, these petitioners filed two additional and separate actions, now consolidated, specifically referring to the previously entered consent decrees claiming a right to seek and obtain relief inconsistent with the terms of the Court approved decrees.

The district court determined that the practices complained of were a result of the consent decrees which the City had previously entered and the suits constituted a collateral attack on decrees over which a different court had retained jurisdiction and dismissed the suits for lack of subject matter jurisdiction.

On appeal, the United States Court of Appeals for the Fifth Circuit held that although the actions now before this Court appear to implicate something other than the consent decrees themselves, the consent decrees were indeed implicated in the petitioners' complaints and the matter now before the Court constituted an impermissible collateral attack upon a preexisting decree.

ARGUMENT

The opinion of the district court (Pet. App. E) sets forth the basis of the consent decrees and the actions upon which they were predicated. The district court found that the practices of which the petitioners now complain were the result of the consent decrees and that the petitioners were challenging the city's compliance with the provisions of those decrees. The district court found that such actions were an impermissible collateral attack.

The court of appeals found as a factual matter that the instant action is a collateral attack upon the consent decrees and stated:

In form, plaintiffs' arguments appear to implicate something other than the consent decrees themselves. Examination of the substance of the plaintiffs' position reveals, however, that the consent decrees are indeed implicated, and plaintiffs' complaints constitute collateral attacks upon the decrees. At the outset, plaintiffs, by stating

that the challenged activity is expressly prohibited by the decrees, are arguing that defendants are not complying with the consent decrees. Accordingly, determination of the validity of the plaintiffs' position necessitates a decision regarding what constitutes compliance with the decrees. Additionally, plaintiffs' position necessitates a decision regarding precisely what activity is mandated by the decrees' requirement that defendants "seek to achieve" certain goals. (Pet. App. 3A)

The court of appeals also noted that during argument counsel for the petitioners stated:

We are attacking the city's noncompliance with the decree, or its misapplication of the decree. (Pet. App. 5A).

The court of appeals noted that the court entering the consent decrees expressly retained jurisdiction "for such further relief or other orders as may be appropriate." (Pet. App. 3A). The court of appeals noted that it was not faced with determining whether the petitioners are entitled to intervene in the principle suits which resulted in the consent decrees.

Indeed, the district court which entered the decrees has conducted hearings and rendered opinions in situations wherein there was a disagreement as to the requirements of the consent decrees. Additionally, the present petitioners have a matter now pending before the court of appeals in *Corely*, one of the consent decree cases, and the court of appeals has suspended a decision on that matter presented by the petitioners until this court rules on the instant petition for writ of certiorari. (App. A to this Response.) Thus, the petitioners have not been denied a reasonable opportunity to present their claims.

The district court and the court of appeals have found that the present matter is an impermissible collateral attack upon a pre-existing decree over which a different court has continuing jurisdiction. Other courts which have considered these issues are in agreement. *Dennison vs. City of Los Angeles*, 658 F.2d 694 (9th Cir. 1981); *Culbreath vs. Dukakis*, 630 F.2d 15 (1st Cir. 1980); *Black and White Children vs. School District*, 464 F.2d 1030 (6th Cir. 1972). Other courts are in agreement. *Prate vs. Freedman*, 430 F.Supp. 1373 (W.D. N.Y.), Aff'd Med., 573 F.2d 1294 (2nd Cir. 1977), Cert. denied, 436 U.S. 922 (1978); *O'Burn vs. Shapp*, 70 F.R.D. 549 (E.D. Pa.), Aff'd Mem., 546 F.2d 418 (3rd Cir. 1976), Cert denied, 430 U.S. 968 (1977).

As there is no disagreement among the circuits that consent

decrees involving claims of racial discrimination in employment practices may not be collaterally attacked; as the petitioners presently have a matter pending before the court of appeals in one of the original cases which resulted in the decrees; as the decrees are of a temporary nature; and as some degree of finality must be achieved it is respectfully submitted that the petition for writ of certiorari be denied.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 78-3795

CHARLIE CORLEY and LEVAUGHN CARTER
Individually, etc., et al.,

Plaintiffs

versus

JACKSON POLICE DEPARTMENT, etc.,
et al.,

Defendants-Appellees,

R.D. THAGGARD, et al.,

Applicants for Intervention-
Appellants.

Appeal from the United States District Court
for the Southern District of Mississippi

ORDER

The unopposed letter motion of R.D. Thaggard, et al., and Ronald N. Ashley to continue the suspension of the appeal in the above referenced case is granted to and including January 15, 1983. The suspension of the appeal will continue in force until the final disposition of Nos. 78-2980- R.D. Thaggard, v. The City of Jackson, Mississippi and 78-3642- Ronald N. Ashley v. City of Jackson, by the Supreme Court, provided that within the period above mentioned there shall be filed with the clerk of this Court the certificate of the clerk of the Supreme Court that a petition for writ of certiorari has been filed in those cases in that court. The clerk of this court shall

issue a notice reinstating all proceedings in this appeal upon the filing of a copy of an order of the Supreme Court denying the application for writ of certiorari, or upon the expiration of the suspension granted herein, unless the above-mentioned certificate shall be filed with the clerk of this court within the time stated.

CHARLES CLARK
Chief Judge